

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEONARDO JOSE FIELDS,

Plaintiff,

v.

Case No. 10-10079

Honorable Patrick J. Duggan

RAINBOW REHABILITATION CENTER,
INC., JULIE WIGAND, and TIFFANY
ALEXANDER,

Defendants.

OPINION AND ORDER

**(1) DENYING PLAINTIFF'S OBJECTIONS TO MAGISTRATE JUDGE
HLUCHANIUK'S APRIL 13, 2011 REPORT AND RECOMMENDATION AND
(2) DENYING DEFENDANTS' MOTION TO DISMISS**

On January 8, 2010, Plaintiff filed this pro se civil rights action against Defendants. On February 16, 2010, this Court referred the matter to Magistrate Judge Michael Hluchaniuk for all pre-trial proceedings. Defendants subsequently filed motions to compel and to dismiss based on Plaintiff's failure to cooperate with discovery. Magistrate Judge Hluchaniuk granted in part and denied in part Defendants' motion to compel and held in abeyance their motion to dismiss as a sanction for failure to cooperate in discovery. On April 13, 2011, Magistrate Judge Hluchaniuk issued a report and recommendation ("R&R") in which he recommends that this Court deny Defendants' motion to dismiss.

In his written order, Magistrate Judge Hluchaniuk advises the parties that they may

object to and seek review of the order, “but are required to file any objections within 14 days of service . . .” (Doc. 92 at 8.) Defendants did not file any objections. Plaintiff filed a “Response/Clarification” to the R&R on April 28, 2011. (Doc. 95.) In his pleading, Plaintiff lists five “objection[s]” to Magistrate Judge Hluchaniuk’s decision.

Plaintiff’s first “objection” is frivolous. His remaining “objections” relate to his efforts to produce certain discovery or Defendants’ proposed jury instruction addressing Plaintiff’s failure to retain certain documentation. These objections only are relevant to Magistrate Judge Hluchaniuk’s previous order that Plaintiff must produce all documents before December 1, 2010, and that any documents not produced before that date could not be used by Plaintiff at trial or otherwise “unless Plaintiff can demonstrate that he could not have found such documents through the exercise of due diligence.”¹ (Doc. 64 at 2.) The objections do not bear upon whether this Court should adopt or reject Magistrate Judge Hluchaniuk’s April 13, 2011 decision.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Hluchaniuk.

Accordingly,

¹If Plaintiff attempts to use documents that he did not produce in response to Defendants’ summary judgment motion or at trial, the parties can argue, at that time, whether Plaintiff demonstrates “that he could not have found such documents through the exercise of due diligence.” If Plaintiff claims that he produced a document(s) and Defendants disagree, that issue also will be addressed at another time.

IT IS ORDERED, that Defendants' motion to dismiss for failure to participate in discovery is **DENIED**.

DATE: June 8, 2011

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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